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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

No. 170

MASON CITY AND FORT DODGE RAILROAD COMPANY

us.

C. D. BOYNTON

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION AND APPLICATION TO HAVE THE WHOLE RECORD SENT TO THE SUPREME COURT FROM THE CIRCUIT COURT OF APPEALS.

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Comes now the Mason City and Fort Dodge Railroad Company, Plaintiff in Error, and moves this court that the whole record and cause in the above entitled cause be sent to this court for its consideration, and this Plaintiff in Error tenders to this court a duly certified copy of the whole record and cause, which record is certified by John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. Said record so certified is identified and made part of this motion and marked respectively, Exhibits "A" and "B."

Said Plaintiff in Error prays that this motion be granted for the following reasons:

1st. The questions involved relate to the jurisdiction of the Federal Courts on a petition to remove to the Federal Court from the State Court; the four questions submitted by the Circuit Court of Appeals as set forth on pages 3 and 4 of the certificate involve and determine jurisdictional questions only.

2nd. It is desirable under decisions of this court and the acts of congress that questions affecting the jnrisdiction of the Federal Courts, on removal to such courts of suits from the State Courts, shall be decided by the Supreme Court rather than by the Circuit Court of Appeals; such questions owing to their gravity and importance demand a determination by this tribunal of last resort.

3rd. The entire record as tendered with this motion is not voluminous. This cause if determined by this court on the entire record requires no greater search or examination of the record than an examination of the certificate furnished by the Circuit Court of Appeals will require.

4th. The first question submitted by the certificate of the Circuit Court of Appeals (page 3) is:

"Was the land owner the defendant within the meaning of the removal statute when the suit was removed into the Circuit Court?"

This question involves the consideration of the Iowa statutes and the issues actually in the case at the time of its transfer to the Federal Court; a consideration of the entire record will enable this court to better determine this jurisdictional question than if this court is deprived of the use of the said record.

5th. The record in this cause as shown on page 3 of the printed record certified by the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit contains the written complaint filed by the Defendant in Error in the United States Circuit Court, which tried the case; the said complaint contained this language: "And plaintiffs pray that this court and a jury in it investigate the question of what sum is justly due as compensation in the premises and make a finding accordingly." No reference or mention is made of this complaint in the findings and certificate made by the Circuit Court of Appeals to this court; a proper determination of whether the railroad company is defendant or is plaintiff in an action by the railroad company for the condemnation of private property under the Iowa statute requires the consideration of the fact that nothing was involved on the trial save the amount of damages, for the title to the property had passed to the railroad company and the right to condemn the property for such purposes was not in issue.

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